

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CONSERVATION LAW FOUNDATION, INC.,

Plaintiff,

v.

**JOHN J. JALBERT D/B/A
METHUEN MOTOR MART CO.**

Defendant.

Case No. 1:13-cv-11955-JGD

Joint Proposed Consent Decree

WHEREAS, Plaintiff Conservation Law Foundation, Inc. (“CLF”) filed this action in 2013 against Defendant John J. Jalbert (“Jalbert”), then doing business as Methuen Motor Mart Co. at a business location of 469 Merrimack Street Methuen, MA 01844, alleging violations of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., and seeking declaratory and injunctive relief, civil penalties, and attorneys fees and costs;

WHEREAS, this Court approved and entered the parties’ proposed consent decree as an order (the “Order”) on June 1, 2015 [ECF No. 72];

WHEREAS, the Order required Jalbert to, *inter alia*, make payments to CLF and a third-party Supplemental Environmental Project (“SEP”) payment recipient, Groundwork Lawrence.

WHEREAS, Jalbert failed to make the first payment due under the Order and CLF moved to compel compliance with the Order;

WHEREAS, Jalbert is the holder of a mortgage on 469 Merrimack Street Methuen, MA 01844 securing an interest-only period fixed rate promissory note (the “Note”) pursuant to which Jalbert will be paid \$870,000, plus interest, through interest-only monthly payments, with the remaining principal and interest due and payable on February 25, 2026;

WHEREAS, Jalbert no longer operates Methuen Motor Mart;

WHEREAS, CLF and Jalbert agree that resolution of this matter without further litigation is in the best interest of the Parties and the public, and that entry of this Decree is the most appropriate means of resolving this action;

NOW, THEREFORE, upon consent of the Parties, and upon consideration of the mutual promises contained herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question) and 33 U.S.C. § 1365(a) (Clean Water Act jurisdiction). An actual, justiciable controversy exists between Plaintiff and Defendant. The requested relief is proper under 28 U.S.C. § 2201, 28 U.S.C. § 2202 and 33 U.S.C. § 1365(a).
2. Venue is properly vested in this Court pursuant to 33 U.S.C. § 1365(c)(1), because the events giving rise to this action occurred at the former Methuen Motor Mart facility, located at 469 Merrimack Street Methuen, MA 01844, and in the Merrimack River Watershed, which are located within this judicial district.

II. SUPPLEMENTAL ENVIRONMENTAL PROJECT

3. Jalbert will pay the SEP recipient Groundwater Lawrence a total amount, inclusive of interest, of \$25,500 for environmental restoration of or other environmental benefit to the Merrimack River watershed. The \$25,500 payment is due and payable on or before February 25, 2026. Jalbert shall make this SEP payment to CLF, which shall hold the \$25,500 in escrow for the SEP recipient and promptly distribute it to the SEP recipient. None of the SEP monies will be retained or used by CLF.
4. To ensure payment of the \$25,500 SEP payment obligation CLF will be granted a secured interest in the form of a partial assignment of his right, title, and interest in and to that certain Promissory Note and Mortgage dated February 25, 2016, originally granted by Phoenix Credit Acceptance Corporation, a Massachusetts Corporation with a principal business address of 262 Lowell Street, Methuen, Massachusetts, to John Jalbert, and providing for repayment of an obligation in the original principal amount of Eight Hundred Seventy Thousand and 00/100 (\$870,000.00) Dollars, payable in monthly installments beginning on April 1, 2016, with a final balloon payment of Eight Hundred Seventy Thousand and 00/100 (\$870,000.00) Dollars plus all outstanding interest and related charges due on April 26, 2026; said Mortgage having been recorded on the 26th day of February, 2016, as Instrument Number 4431, in Book 14544, Page 87, with Essex North District Registry of Deeds, Commonwealth of Massachusetts, in relation to the parcel of land known and numbered as 469 Merrimack Street, Methuen, Massachusetts 01844. A copy of the agreed upon forms of the Partial Assignment of Note and Partial Assignment of Mortgage is annexed hereto as **Exhibit A**. If Groundwater Lawrence is not able to accept the \$25,500 payment from escrow on the due date, then Plaintiff will hold the payment in escrow until another SEP recipient can be identified to perform a project for environmental restoration of or other environmental benefit to the Merrimack River watershed.

III. LIQUIDATED ATTORNEY FEES AND COSTS

5. Jalbert will pay CLF a total amount, inclusive of interest and all attorney fees in this matter, of \$41,700. The \$41,700 payment is due and payable on or before February 25, 2026.
6. To ensure payment of the \$41,700 liquidated attorney fees payment obligation CLF will be granted a secured interest in the form of a partial assignment of his right, title, and interest in and to that certain Promissory Note and Mortgage dated February 25, 2016, originally granted by Phoenix Credit Acceptance Corporation, a Massachusetts Corporation with a principal business address of 262 Lowell Street, Methuen, Massachusetts, to John Jalbert, and providing for repayment of an obligation in the original principal amount of Eight Hundred Seventy Thousand and 00/100 (\$870,000.00) Dollars, payable in monthly installments beginning on April 1, 2016, with a final balloon payment of Eight Hundred Seventy Thousand and 00/100 (\$870,000.00) Dollars plus all outstanding interest and related charges due on April 26, 2026; said Mortgage having been recorded on the 26th day of February, 2016, as Instrument Number 4431, in Book 14544, Page 87, with Essex North District Registry of Deeds, Commonwealth of Massachusetts, in relation to the parcel of land known and numbered as 469 Merrimack Street, Methuen, Massachusetts 01844. A copy of the agreed upon forms of the Partial Assignment of Note and Partial Assignment of Mortgage is annexed hereto as **Exhibit A**. Jalbert shall cooperate with CLF in CLF's obtaining this secured interest.

IV. NO PREPAYMENT PENALTY

7. There will be no prepayment penalty, and defendant will receive a 4.5% per year pro-rated discount from the \$67,200.00 total SEP and fees amount due if the total SEP and fees are paid early, with the discount computed based on when full payment of the total \$67,200 is made.

V. EFFECT OF DECREE

8. CLF covenants not to sue and releases and discharges John J. Jalbert, Sr. from any and all claims, causes of action, or liability under Section 505 of the Clean Water Act, 33 U.S.C. § 1365 for damages, penalties, fines, injunctive relief, or any other claim or relief (i) relating to or resulting from noncompliance with the Clean Water Act and/or the Court's prior Orders occurring prior to the date the Court enters this Decree or (ii) for any past violations alleged in the Complaint or prior pleadings in this matter.
9. John J. Jalbert, Sr., releases and discharges CLF, its representatives, assigns, agents, employees, officers, and attorneys, including those who have held positions in the past from any and all claims, liability, demands, penalties, costs, and causes of action

of every nature which concern actions taken prior to the date the Court enters this Decree.

10. Neither this Decree, nor terms thereof, nor performance of the terms thereunder by Jalbert shall constitute or be construed as an admission or acknowledgment by Jalbert of the factual or legal assertions contained in this Decree or in CLF's Complaint, and Jalbert retains the right to controvert in any subsequent proceedings, other than proceedings for the purpose of implementing or enforcing this Decree, the validity of the facts or determinations contained in this Decree or the Complaint. Neither this Decree, nor terms thereof, nor performance of the terms thereunder, shall constitute or be construed as an admission or acknowledgment by Jalbert of any liability, or an admission of violation of any law, by Jalbert or by his employees, agents, successors, or assigns.
11. CLF does not, by consent to the Decree, warrant or aver in any manner that Jalbert's compliance with this Decree will constitute or result in compliance with federal or state law or regulation. Nothing in this Decree shall be construed to affect or limit in any way the obligation of Jalbert to comply with all federal, state, and local laws and regulations governing any activity required by this Decree.

VI. REVIEW AND TERM OF DECREE

12. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), this Consent Decree cannot be entered until forty-five (45) days after the receipt of a copy of the proposed Consent Decree by the United States Attorney General and the EPA. Therefore, upon signing of this decree by the Parties, CLF shall serve copies of this Decree upon the EPA Administrator, the Regional EPA Administrator, and the Attorney General for review, as required by 40 C.F.R. § 135.5.
13. Upon the expiration of the forty-five-day review period provided by 33 U.S.C. § 1365(c)(3), the Parties will jointly move the Court for entry of this Decree. This Decree shall take effect on the date it is entered by this Court and shall terminate upon completion of all payments under Sections III and IV, above. If for any reason the Court should decline to approve this Decree in the form presented, the Parties agree to continue negotiations in good faith in an attempt to cure any objection raised by the Court to entry of this Decree.

VII. MODIFICATION AND ENFORCEMENT OF DECREE

14. This Decree may be modified only upon written consent of the Parties and the approval of the Court.
15. This Court shall retain jurisdiction over this matter and allow this action to be reopened for the purpose of enabling the Parties to this Decree to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Decree.

VIII. MISCELLANEOUS PROVISIONS

16. All payments pursuant to this Decree shall be made in form of a certified bank check unless otherwise agreed by the parties.
17. Each person signing this Decree represents and warrants that s/he has been duly authorized to enter into this Decree by the Party on whose behalf it is indicated that the person is signing.
18. Entire Agreement. This Decree constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written, among the Parties.
19. Notices. Any notice, demand, copies of documents and other communications required to be made under the provisions of this Decree (collectively, "Notices") by any Party hereto shall be effective only if in writing and (a) personally served, (b) mailed by United States registered or certified mail, return receipt requested, postage prepaid, or (c) sent by a nationally recognized courier service (i.e., Federal Express) for next-day delivery, to be confirmed in writing by such courier. Notices shall be directed to the Parties at their respective addresses set forth below. Notices given in the foregoing manner shall be deemed given when (a) actually received or refused by the party to whom sent if delivered by courier, or (b) if mailed, on the day of actual delivery as shown by the addressee's registered or certified mail receipt.

Notices for Plaintiff shall be sent to:

Zachary K. Griefen, Esq.
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602
zgriefen@clf.org
Attorney for CLF

Notice for Defendant shall be sent to:

Donald L. Anglehart
Law Office of Donald L. Anglehart LLC
One Broadway, 14th Floor
Cambridge, Massachusetts 02142
don@anglehart.com
Attorney for John J. Jalbert, Sr.

Each Party shall promptly notify the other Party of any change in the above-listed contact information by using the procedures set forth in this paragraph.

20. Authorization. Each person signing this Decree represents and warrants that s/he has been duly authorized to enter into this Decree by the Party on whose behalf it is indicated that the person is signing.
21. Successors and Assigns. This Decree shall be binding upon and inure to the benefit of the Parties and their respective representatives, heirs, executors, administrators, successors, officers, directors, agents, attorneys, employees and permitted assigns.
22. Interpretation. The provisions contained herein shall not be construed in favor of or against any Party because that Party or its counsel drafted this Decree, but shall be construed as if all Parties prepared this Decree, and any rules of construction to the contrary are hereby specifically waived. The terms of this Decree were negotiated at arm's length by the Parties hereto.
23. Headings. The section and paragraph headings contained in this Decree are for reference purposes only and shall not affect in any way the meaning or interpretation of this Decree.
24. Counterparts. Facsimile, electronic and scanned signatures shall be deemed to be originals for all purposes. Copies of the original Agreement, whether transmitted by facsimile or other means, shall be effective. This Agreement may be signed in counterparts.
25. Severability. In the event that any of the provisions of this Decree are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

CONSERVATION LAW FOUNDATION, INC.



By: _____ Date: June 27, 2017

Christopher M. Kilian, VP and Director
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602
(802) 223-5992 x4011
ckilian@clf.org

JOHN J. JALBERT, SR.

By:  _____ Date: 6-29-17
John J. Jalbert, Sr.

ENTERED and DATED this ____ day of _____, 2017

Honorable Judith G. Dein
United States Magistrate Judge